

12661

PROMISSORY NOTE
and
SECURITY AGREEMENT

LAW OFFICES OF
**POSKANZER, HESSBERG, BLUMBERG, DOLIN,
BARBA, GREISLER & TROMBLY**
SUITE 755 — 60 STATE STREET
ALBANY, NEW YORK
12207

PROMISSORY NOTE
AND
SECURITY AGREEMENT

12661

RECORDATION NO. _____ Filed 1225

DEC 24 1980 -1 35 PM

INTERSTATE COMMERCE COMMISSION

\$ 329,930

Date December 23, 1980

FOR VALUE RECEIVED, the Undersigned,
Alford P. Rudnick, (jointly
and severally, if more than one) by this Promissory Note and
Security Agreement, hereby unconditionally promises to pay
to KEY BANK N.A. or order, at its principal office at 60
State Street, Albany, New York 12207 (or such other place
as the Bank from time to time may designate), the sum of
three hundred and twenty-nine thousand nine hundred and thirth (\$329,930)
DOLLARS, in lawful money of the United States of America,
together with interest thereon at a rate of One (1%) percent
per annum above the prime commercial rate of KEY BANK N.A.
as that rate may exist from time to time, provided, however,
that said rate of interest shall at no time exceed seventeen
(17%) percent per annum nor be less than twelve (12%)
percent per annum, and shall increase or decrease
accordingly effective as of the first day of each and every
calendar month and any such rate or changed rate shall

remain effective for such entire calendar month, as follows:

In nineteen (19) equal consecutive quarter annual instalments of *fourteen thousand and twenty-two and 50/100* (\$14,022.50) each commencing on April 20, 1981 and payable thereafter on the 20th day of each April, July, October and January until January 20, 1986 when this Note shall mature and all principal then outstanding together with any accrued interest thereon shall be due and payable in full. Each instalment payment received shall be applied first to interest at the aforesaid rate and the balance, if any, to principal. Interest shall be computed on a 360 day basis and shall accrue to the date of receipt of each installment payment. The Security Agreement shall remain in full force and effect until all obligations payable hereunder have been paid in full.

Section 1. Definitions. The following words and terms as used in this Note shall have the following meanings unless the context or use indicates another or different meaning or intent:

(a) "Bank" means Key Bank N.A., 60 State Street, Albany, New York, and includes its successors in title and assigns.

(b) "Borrower" means the undersigned, jointly and severally, if more than one, and the respective successors, assigns, heirs, executors, administrators and other legal representatives of each of the undersigned.

(c) "Cars" means, collectively, (i) the covered 100-ton steel tank hopper railroad freight cars to be purchased from the Portec Inc., Railcar Division (the "Manufacturer"), pursuant to an Agreement, dated as of December 12, 1980, between the Manager and the Manufacturer. (All of the Manager's rights to purchase such freight cars from the Manufacturer having been assigned by the Manager to the Borrower pursuant to an instrument of assignment, dated December 23, 1980, between the Manager, the Manufacturer and the Borrower.), (ii) all appliances, parts, instruments, accessories, appurtenances and other equipment of whatever nature which shall, at any time or times, become incorporated or installed in or attached to any of such freight cars, and (iii) all additions, improvements, renewals and replacements made at any time or times to any of the foregoing. All of the Cars are to be identified in Exhibit A annexed hereto promptly after all of the Cars have been delivered by the Manufacturer to the Manager as agent for the Borrower, as contemplated by the Management Agreement.

(d) "Collateral" means, collectively, all of the rights, title and interests, all of the agreements, contracts, instruments, property, assets and moneys, and all of the income and proceeds of any thereof, in, to, under or in respect to which the Bank, by this Note, acquires or shall from time to time acquire a security interest in.

(e) "Drawdown Date" means, the date as specified in the Loan Application on which the Purchase Price is to be paid to the Manufacturer.

(f) "Event of Default" means any event or condition described in Section 9 hereof.

(g) "Event of Loss" means, in relation to any Cars, any of the following: (i) the loss or total destruction of such Cars; (ii) damage to such Cars to an extent which makes the repair of such Cars uneconomical or which renders such Cars unfit for normal use; or (iii) any condemnation, confiscation, seizure, requisition or other taking of title to or use of such Cars which shall result in the loss of title to or use of such Cars for a period of thirty (30) days or more.

(h) "Event of Loss of Proceeds" means all compensation, damages or other payments (including, but not limited to, recoveries under any policies of insurance payable in respect of any Event of Loss with respect to any of the Cars) which shall at any time be due and payable to the Borrower, or to the Manager, as agent for the Borrower, or to the Bank, by any governmental authority or by any other person as a consequence or in respect of any Event of Loss with respect to any of the Cars.

(i) "Financing Fee" means the fee in the amount of \$ 100.00 per Car which was paid by the Borrower to the Bank upon the execution and delivery of this Note to reimburse the Bank for the filing fees, recording costs and attorneys fees incurred by the Bank in making the Loan, all of which are to be paid by the Borrower.

(j) "Freights" has the meaning given to that expression in Section 5(e) hereof.

(k) "Instalment Payment Dates" means, collectively, the date and/or dates on which the quarterly instalments of principal and interest shall become and be due and payable by the Borrower to the Bank in accordance with the terms hereof.

(l) "Insurances" has the meaning given to that expression in Section 5(a) hereof.

(m) "Leases" has the meaning given to that expression in Section 5(d) hereof.

(n) "Loan" means the loan in the principal amount of *Three Hundred Twenty Nine Thousand, Nine Hundred Twenty* (\$329,920) DOLLARS to be made by the Bank to the Borrower upon the terms and subject to the conditions contained in this Note, and to be repaid together with interest as hereinbefore set forth.

(o) "Loan Application" means the written application of the Borrower to the Bank as set forth in Exhibit "B" hereto requesting an extension of credit to the Borrower, and containing Borrower's Financial Statement; all in form and content satisfactory to the Bank.

(p) "Management Agreement" means the Management Agreement, dated as of December 23, 1980, between the Manager and the Borrower under the terms of which the Manager has agreed to manage the Cars as agent for the Borrower, and any replacements, amendments or substitutions thereto.

(q) "Manager" means GWI Rail Management Corporation, a Delaware corporation, authorized to do business in the State of New York, acting as agent for the Borrower under the Management Agreement, with principal offices at 3846 Retsof Road, Retsof, New York, and includes the successors and assigns of GWI Rail Management Corporation.

(r) "Manufacturer" has the meaning given to that expression in Section 1(c) hereof.

(s) "Note" means this Promissory Note and Security Agreement as originally executed and includes the Exhibits annexed hereto.

(t) "Obligations" means, collectively, all indebtedness, obligations and liabilities existing on the date of this Note or arising from time to time thereafter, whether matured or unmatured, certain or contingent, liquidated or unliquidated, arising by contract, operation of law or otherwise, of the Borrower to the Bank (i) in respect to the Loan, or (ii) under or in respect of this Note.

(u) "Purchase Price" means the total purchase price payable by the Borrower for the Cars, which price includes estimated transit fees, inspection charges and all other fees necessary to place the Cars in service.

(v) "Sales Proceeds" means all moneys, property and assets which shall at any time become due and payable to or otherwise receivable by the Borrower or by the Manager, as agent for the Borrower, or by the Bank from any person in consideration for the sale, transfer or other disposition of all or any of the Cars.

(w) "Security Assurance Agreement" means the Agreement dated as of December 23 , 1980 between the Manager, the Bank and the Borrower wherein the Manager has agreed to pay or cause to be paid to the Bank all moneys which will or are due and payable to the Borrower by the Manager under the Management Agreement.

Section 2. Making The Loan, Etc.

(a) This Note evidences the obligations of the Borrower to the Bank to repay the Loan which is to be made to the Borrower by the Bank upon the terms and subject to the conditions contained in this Note.

(b) The entire proceeds of the Loan will be applied by the Borrower towards the payment of the Purchase Price. The Loan will be made by the Bank to the Borrower on the date on

which the Purchase Price is to be paid to the Manufacturer provided all of the conditions specified in Section 3 hereof shall have been met. The Borrower hereby irrevocably directs the Bank to make the Loan to the Borrower on the Drawdown Date by crediting the loan proceeds to the bank account specified in the Loan Application.

(c) The Borrower hereby agrees that (i) the Bank shall not have any responsibility to the Borrower or to any other person for the authorization, execution, validity or genuineness of the Loan Application or for the truth or accuracy of any recitals, statements or representations contained therein, even if such Loan Application should in fact be invalid, unauthorized, fraudulent or forged, (ii) the Bank shall be entitled to rely conclusively upon any Loan Application received by the Bank, and (iii) any action taken by the Bank in reliance upon a Loan Application shall be binding upon the Borrower.

Section 3. Conditions Of Lending. The obligation of the Bank to make the Loan to the Borrower is subject to satisfaction of all of the following conditions precedent:

(a) The Bank shall have received from the Manager a fully executed Loan Application at least five (5) business

days, excluding weekends and holidays, prior to the Drawdown Date, and shall have approved the same.

(b) No Event of Default shall exist on the Drawdown Date.

(c) The Financing Fee shall have been paid in full by the Borrower to the Bank.

(d) The Bank shall have received evidence, in form and substance satisfactory to it, that: (i) each of the Cars has been duly delivered to and accepted by the Manager as agent for the Borrower; (ii) the Borrower has good title to each of the Cars subject to no mortgages, security interests or other liens or encumbrances other than the security interests granted to the Bank hereby; (iii) insurance coverage satisfactory to the Bank is in effect in respect to the Cars; and that the Bank is named as loss payee on all such policies of insurance; (iv) Uniform Commercial Code financing statements, in form and substance satisfactory to the Bank, have been duly executed and delivered by the Borrower, as debtor, and duly filed in all appropriate places; and (v) a counterpart original of this Note and two certified true copies thereof have been duly filed with the

Interstate Commerce Commission, together with all other agreements, instruments and documents as shall, in the opinion of the Bank, be necessary in order to maintain, preserve and safeguard at all times all of the rights, title and interests in and to the Cars of the Borrower, as owner, and the Bank, as secured party.

(e) The Bank shall have received all such information as shall be required by the Bank in order to identify each of the Cars and to complete Exhibit A hereto. The Borrower hereby irrevocably authorizes the Bank to complete Exhibit A promptly after the Bank's receipt of such information. The said Exhibit A, as so completed by the Bank, shall become and be a part of this Note with the same force and effect as if the said Exhibit A had been completed at the time of the execution and delivery of this Note by the Borrower.

(f) The Management Agreement and the assignment referred to in Section 1(c) hereof have been duly executed by all parties hereto, are in full force and effect and the Manager has fully and unconditionally accepted the same.

(g) The Security Assurance Agreement shall have been duly authorized, executed and delivered to the Bank and be in full force and effect.

(h) All proceedings in connection with the transactions contemplated hereby and all documents incidental thereto shall be satisfactory in form and substance to the Bank, and the Bank shall have received all such originals or copies thereof as the Bank may request.

Section 4. Mandatory Prepayments, Etc.

(a) If any Event of Loss shall occur in respect to any of the Cars, there shall be due and payable to the Bank on the 120th day following the date on which the Event of Loss occurred (that date being called herein the "Mandatory Prepayment Date"), that portion of the principal amount of this Note outstanding on such Mandatory Prepayment Date as shall be equal to the amount obtained by subtracting (i) the aggregate amount of all Event of Loss Proceeds paid in respect of such Event of Loss and applied by the Bank, at any time or times on or prior to such Mandatory Prepayment Date, from (ii) the amount obtained by dividing the principal amount of this Note outstanding on the date on which such Event of Loss occurred, by the total number of Unaffected Cars. The term "Unaffected Cars" means those Cars which have not been sold, transferred or otherwise disposed of at or prior to such Event of Loss and in respect to which no Event of Loss has occurred at or prior to such time. All payments made under this paragraph shall be applied to principal in the inverse order of maturity.

Note, in whole or in part, at any time upon seven (7) days written notice to the Bank, provided however, that all partial prepayments shall be applied in the inverse order of maturity.

Section 5. Grant of Security Interest. In order to secure the payment and performance of all of the Obligations hereunder, the Borrower hereby mortgages and assigns to the Bank, and hereby grants to the Bank a continuing security interest in, all of the Borrower's present and future rights, title and interest in, to, under or in respect to all of the following:

(a) the Cars, and any and all accessories, attachments, additions and accessions thereto;

(b) the Agreement and assignment referred to in Section 1(c) hereof;

(c) the Management Agreement and any replacements or substitutions thereto as approved by the Bank, including, without limitation, all of the contract rights, powers, privileges, options, guarantees, indemnities, claims and remedies and all other interests and benefits whatsoever of the Borrower under or in respect to said Management

(b) Upon the occurrence of any Event of Loss all Event of Loss Proceeds payable to or for the account of Borrower as a consequence of the occurrence of such Event of Loss, shall be absolutely due and payable to the Bank and such proceeds shall upon receipt be immediately paid to the Bank. The Bank upon receipt of the proceeds will apply them as follows:

(i) if the Proceeds are received by the Bank prior to the "Mandatory Prepayment Date", then the Bank will apply the full amount of such Event of Loss Proceeds towards the prepayment of this Note in the inverse order of maturity; and

(ii) if the proceeds are received on or after the Mandatory Prepayment Date but prior to payment of the Mandatory Prepayment pursuant sub-paragraph "a" hereof, then the proceeds shall be applied toward the Mandatory Prepayment due with the Borrower being fully liable for any deficiency, and any surplus being remitted to Borrower; and

(iii) if the proceeds are received after Mandatory Prepayment required by sub-paragraph "a" hereof, has been made, then the proceeds shall be remitted to Borrower.

(c) The Borrower shall have the right to prepay this

Agreement;

(d) all Leases, contracts for hire or other contracts or agreements of any nature whatsoever pursuant to or under which the Borrower or the Borrower's agents or representatives or the Manager or any of its designees, agents or representatives shall, at any time lease, hire, bail or let the Cars or any of them to any person or persons or otherwise permit or authorize the Cars or any of them to be used or employed by or on behalf of any person or persons (herein collectively referred to as Leases);

(e) any and all moneys due or to become due to the Borrower or the Borrower's agents or representatives under or in respect of the Management Agreement or under or in respect of the Leases, including, without limitation, all damages and claims for damages for or in respect of any breach of any of the Management Agreement or any of the Leases, and all earnings and revenues of the Cars which shall at any time become and be due and payable to the Borrower or to the Borrower's agents or representatives (all such moneys, earnings and revenues being herein collectively called the "Freights") and all accounts which shall, at any time or times, arise in respect to all or any of the Freights;

(f) all Sales Proceeds, all Event of Loss Proceeds and all accounts which shall, at any time arise in respect to all or any of the Sales Proceeds or the Event of Loss Proceeds;

(g) all policies or contracts of insurance which shall at any time be obtained or otherwise entered into by the Borrower or by any other persons in the joint names of such persons and the Borrower in respect of the Cars or any of them or in respect of the Freights, including, without limitation, all of the benefits of the Insurances and all claims in respect thereof of whatsoever nature (herein collectively called Insurances);

(h) all of the proceeds and products of all of the foregoing.

Section 6. Bank's Rights In Respect Of The
 Collateral, Etc.

(a) The Borrower hereby unconditionally grants to the Bank the immediate and continuing right to give notices, requests, consents, approvals and waivers under any of the Management Agreement, the Leases or the Insurances, to make demands upon any party thereto, to execute and/or deliver

any instruments or documents required to be executed and/or delivered by the Borrower thereunder, to compel performance by any party thereto of all or any of the obligations thereunder of any such party, to receive notices or other communications from any parties thereto, to request or agree to any amendments or modifications thereof or any supplements or additions thereto, to receive or collect by legal process or otherwise and to give receipts for all Freights, Sales Proceeds, or Event of Loss Proceeds which may become payable to the Borrower, and for all other moneys which may at any time become recoverable by or payable to the Borrower by, any party to any of the Management Agreement, the Leases or the Insurances, and generally, to do all of the things which the Borrower is or may hereafter become entitled to do under or in respect of any of the Management Agreement, the Leases, the Insurances or the Cars, the Borrower hereby appointing the Bank the attorney-in-fact of the Borrower with power of substitution, in the name of the Borrower or of the Bank or its nominees, to do all or any of the foregoing, the Borrower hereby ratifying and confirming all that the Bank or any substitute attorney may do in pursuance of the powers granted to it by this Note.

The foregoing rights shall only be exercised by the Bank if (i) an Event of Default as defined in Section 9

hereof has occurred and is continuing or has been threatened, or (ii) the Bank, in its sole and absolute opinion, upon notification to the Borrower, deems the exercise of such rights necessary in order to preserve and maintain the security interests and rights granted to the Bank under this Note.

(b) The Bank shall have the right (but shall have no obligation) at any time to take, in its own name or in the name of the Borrower, or otherwise, such action as the Bank may determine to be necessary to cure any default, or to protect or enforce any rights of the Borrower, under or in respect of any of the Management Agreement, the Leases, the Insurances or the Cars. Any action, suit or proceeding brought by the Bank pursuant to any provision hereof may be compromised, withdrawn or otherwise dealt with by the Bank without the approval of the Borrower or any other person.

(c) It is the express intention of the Borrower and the Bank that all of the Freights, Event of Loss Proceeds and all other moneys which shall at any time become due and payable to the Borrower under or in respect of the Management Agreement, the Leases, the Insurances or the Cars shall be paid directly to the Bank for and on account of the Borrower. If any of the Freights, Event of Loss Proceeds or

any such other moneys are received at any time by the Borrower, the Borrower shall pay the same directly to the Bank.

(d) Each and every right, remedy, power and privilege conferred on or reserved to the Bank hereunder shall be cumulative and in addition to, and not in limitation of, each and every other right, remedy, power or privilege conferred on or reserved to the Bank under this Note or under any other collateral. All of the rights, remedies, powers and privileges vested in the Bank hereunder may be exercised by the Bank at such times and in any such manner as the Bank may, in its absolute discretion, deem expedient.

(e) The Obligations and the security interest granted hereby shall not in any manner be discharged, impaired, diminished, released or affected by any of the following, whether or not the Borrower shall have had notice or knowledge thereof: (i) any extension or postponement of the time for the payment or performance of any of the Obligations, the acceptance of any partial payment thereon, any and all other indulgences by the Bank in respect of any of the Obligations, the taking, addition, substitution or release, in whole or in part, at any time of any additional

security for any of the Obligations or the addition, substitution or release, in whole or in part, of any person or persons primarily or secondarily liable in respect of any of the Obligations; (ii) any action or delay in acting or failure to act on the part of the Bank hereunder or under the Security Assurance Agreement or in respect of any of the Obligations or any of the Collateral or otherwise, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy against the Borrower hereunder or to mitigate damages or to assert any right or to pursue any remedy under any of the loan agreements, instruments or documents; (iii) any waiver, consent or other action or acquiescence by the Bank at any time in respect to (a) any default by the Borrower in the performance of or the compliance with any term, covenant, condition or provision contained herein, or (b) any default under any of the loan agreements, instruments or documents thereto; (iv) the existence or creation at any time of any claim defense, right of set-off or counterclaim of any nature whatsoever of the Borrower against the Bank; or (v) any default in the performance of or the compliance with any term, covenant, condition or provision contained in the Security Assurance Agreement. The Borrower hereby irrevocably assents to and waives all presentment, demand, notice, and protest in connection with the delivery,

acceptance, performance, default or enforcement of this Note or of any Collateral.

Section 7. Borrower's Representations and Warranties.

The Borrower hereby represents and warrants to the Bank that:

(a) The Borrower is an individual currently residing at Boston, Massachusetts.

(b) The Borrower is the absolute and lawful owner of the Collateral and that no part of the Collateral is subject to any mortgage, assignment, lien, pledge, charge, security interest or other encumbrance of any kind whatever other than the security interests granted to the Bank hereby.

(c) This Note has been duly executed and delivered to the Bank by the Borrower, and the agreements of the Borrower contained herein constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms.

(d) That the Borrower's financial statement, as submitted to the Bank with the Loan Application, is true and complete in all respects and fully and fairly represents the

Borrower's financial condition on the date thereof and that since the date thereof, the Borrower's financial condition as therein reflected, has not materially changed.

Section 8. Further Covenants of the Borrower. The Borrower hereby covenants and agrees with the Bank that, until all of the Obligations hereunder are paid in full, the Borrower will:

(a) Not at any time without the express prior written consent of the Bank, (i) agree or consent to any cancellation, termination, modification, alteration or rescission of the Management Agreement, any Leases or the Security Assurance Agreement, (ii) waive, release or discharge, or agree or consent to any waiver, release or discharge of, any obligation or liability of the Manager under either the Management Agreement or the Security Assurance Agreement, (iii) agree or consent to any act or omission by any person which would constitute a default by such person in the performance of or compliance with any term, covenant or provision of the Management Agreement, the Security Assurance Agreement or the Leases, (iv) make or otherwise enter into any Management Agreement (other than the Management Agreement) or any Leases, or (v) extend or

renew, or agree to any extension or renewal of, the Management Agreement or any Leases.

(b) Not at any time, without the express prior written consent of the Bank, (i) use or employ any of the Cars or knowingly permit or authorize any of the Cars to be used or employed in any way or for any purpose which might impair the security interests granted to the Bank hereby, (ii) sell, offer for sale or agree to sell any of the Cars or otherwise authorize or permit any person or persons (including the Manager) to sell, offer for sale or agree to sell any of the Cars, (iii) transfer or dispose of any of the Cars or otherwise agree or consent to any transfer or disposition of any of the Cars, (iv) refuse to permit or otherwise object to the making of any alterations, modifications, improvements or additions to the Cars or any of them of the kind described in Section 8(c) of the Management Agreement, or (v) take or omit to take any action, which might result in the withdrawal of any of the Cars from the Management Program (as defined in the Management Agreement) or the termination of the Management Agreement or the Security Assurance Agreement.

(c) Not at any time create, assume or incur, or suffer to be created, assumed or incurred, or permit to

exist, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind in respect of the Collateral or any part thereof, except for the Security Interest herein granted to the Bank.

(d) The Borrower will fully perform and comply with all of the agreements and conditions to be performed and complied with by it under the Management Agreement, any Leases and the Security Assurance Agreement.

(e) The Borrower will insure each of the Cars or otherwise cause each of the Cars to be insured in the name of the Borrower or in the joint names of the Borrower and any manager and/or lessee in such amounts and against such risks as the Bank may from time to time stipulate. The Borrower will place all such insurances, with such reputable insurance companies or underwriters as the Bank shall approve. All of the insurances with respect to the Cars shall name the Bank as first loss payee. All insurances shall provide for notice to the Bank prior to any cancellation or proposed alteration and prior notice of any other act or omission which might invalidate or render unenforceable, in whole or in part, any of the Insurances.

(f) The Borrower will furnish to the Bank the

following:

(i) not later than ninety (90) days after the end of each calendar year, the personal financial statement of the Borrower, such personal financial statement to be in the form of the personal financial statement annexed hereto as Exhibit B. The statement shall be materially accurate and complete and fairly represent the financial condition of the Borrower as of the end of such calendar year;

(ii) with reasonable promptness, such other information respecting the assets, liabilities and financial condition of the Borrower as the Bank may reasonably request;

(iii) with reasonable promptness, all such information regarding the Cars, the Management Agreements, the Leases and the Insurances as the Bank may reasonably request; and

(iv) immediately upon the occurrence of any such change, written notice of any change in the Borrower's address from that shown in Section 7(a)

of this Note.

(h) The Borrower will pay to the Bank, on demand, all moneys whatsoever which the Bank shall or may reasonably expend, or become liable for, in the protection, maintenance or enforcement of the security interests granted to the Bank hereby or in the exercise by the Bank of any of the rights, remedies, powers and privileges vested in the Bank hereunder, including reasonable attorneys fees.

(i) The Borrower will, upon the written request of the Bank, and without any expense to the Bank, execute, acknowledge (if appropriate) and deliver, any and all such further assurances and other agreements, instruments and documents and take or cause to be taken such other action as shall, in the opinion of the Bank, be necessary at any time or times.

Section 9. Events of Default and Remedies.

(a) The occurrence of any one or more of the following events shall constitute an "Event of Default":

(i) any principal, interest or other sum payable to the Bank under this Note not being paid when due; or

(ii) any representation or warranty made by or on behalf of the Borrower in this Note or otherwise in connection with this Loan not being true and correct as of the date on which such representation or warranty is made; or

(iii) the Borrower's failure to perform, comply with or satisfy any of the terms, covenants, agreements or obligations contained in this Note; or

(iv) the Borrower's failure to perform, comply with or satisfy any covenant, agreement or obligation contained in the Management Agreement, any Leases or the Security Assurance Agreement; or

(v) any substantial loss, theft, material damage or destruction of or to the Collateral not adequately covered by the Insurances, or any levy on the Collateral or seizure or attachment thereof by legal process which is not discharged upon the Borrower's receipt of notice thereof; or

(vi) all of any part of the Collateral being or attempted to be sold, transferred, assigned or disposed of, by operation of law or otherwise; or

(vii) the death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Borrower; or

(viii) anything which, in the reasonable opinion of the Bank, might imperil the security interests granted to the Bank hereby; or

(ix) the occurrence of any event which, in the reasonable opinion of the Bank, might impair the ability of the Borrower to pay and perform all or any part of the Obligations.

(x) any failure on the part of either the Borrower or the Manager to fully comply with the terms and conditions of the Security Assurance Agreement or the cancellation or termination of that Agreement.

(b) If any Event of Default shall occur:

(i) the Bank may, without notice or demand, declare all of the Obligations, including the entire unpaid principal of this Note, all of the unpaid interest accrued thereon and all (if any) other sums payable by the Borrower to the Bank hereunder to be immediately due and payable.

(ii) the Bank may proceed to protect and enforce all or any of its rights, remedies, powers or privileges under this Note by action at law, suit in equity or other appropriate proceedings, whether for specific performance of any covenant contained in this Note, or otherwise.

(iii) the Bank shall have, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code of New York, including, without limitation, the right to take immediate possession of the Collateral. The Borrower will, upon demand by the Bank, but at the expense of the Borrower, make the Collateral available to the Bank at a place and time designated by the Bank which is reasonably convenient to both parties. The Bank will give the Borrower at least five (5) days' prior written

notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition of the Collateral is to be made.

Section 10. Application of Moneys Received by Bank,
 Obligations Absolute and Unconditional, etc.

(a) The Manager has agreed, in accordance with the terms of the Security Assurance Agreement, to pay to the Bank, for the account of the Borrower, on each Instalment Payment Date, that portion of the Distributable Net Earnings (as hereinafter defined) relating to such Instalment Payment Date as shall be equal to the sum (such sum being in this paragraph (a) called the "Debt Service ") of (i) the amount of the instalment due and payable by the Borrower to the Bank hereunder on such Instalment Payment Date, and (ii) the aggregate amount of all (if any) other sums payable by the Borrower to the Bank in respect of this Note. If the Debt Service due and payable by the Borrower to the Bank on any Instalment Payment Date shall be equal to or greater than the Distributable Net Earnings relating to such Instalment Payment Date, the Manager has agreed, in accordance with the terms of the Security Assurance Agreement, to pay directly to the Bank, for the account of the Borrower, on such Instalment Payment Date, the full amount of the

Distributable Net Earnings relating to such Instalment Payment Date. Upon the receipt by the Bank from the Manager of all or any part of the Distributable Net Earnings relating to any Instalment Payment Date, the Bank will apply the full amount of the Distributable Net Earnings received by the Bank from the Manager towards the payment of the Debt Service due and payable by the Borrower to the Bank on such Instalment Payment Date. For the purposes of this paragraph, the term "Distributable Net Earnings" means the Net Earnings (as defined in the Management Agreement) which shall be due and payable by the Manager to the Borrower, in accordance with the terms of the Management Agreement, within twenty days after the end of the calendar quarter ending on the last day of the calendar month immediately preceding the calendar month in which such Instalment Payment Date falls.

(b) The Manager has agreed also in accordance with the terms of the Security Assurance Agreement, to pay to the Bank, for the account of the Borrower, the full amount of all Event of Loss Proceeds which become payable by the Manager to the Borrower at any time in accordance with the terms of the Management Agreement. Promptly after the receipt by the Bank from the Manager of any Event of Loss Proceeds, the Bank will apply the full amount of such Event of Loss Proceeds as provided by Section (4) hereof.

(c) The Manager has also agreed, in accordance with the terms of the Security Assurance Agreement, to pay to the Bank, for the account of the Borrower, the full amount of all Sales Proceeds which become payable by the Manager to the Borrower in accordance with the terms of the Management Agreement. Promptly after the receipt by the Bank from the Manager of any Sales Proceeds, the Bank will apply the full amount of such Sales Proceeds in or towards the prepayment of the principal amount of this Note, such prepayment to be in the inverse order of maturity.

(d) The Manager has also agreed, in accordance with the terms of the Security Assurance Agreement, to pay to the Bank, for the account of the Borrower, the full amount of any additional sums which become payable by the Manager to the Borrower in accordance with the terms of the Management Agreement. Promptly after the receipt by the Bank from the Manager of any additional sums, the Bank will apply the full amount of such additional sums towards the payment of all amounts which are then due and payable by the Borrower to the Bank hereunder. The balance (if any) remaining after such application will be held by the Bank until the first Instalment Payment Date following the Bank's receipt of such additional sums. Upon such Instalment Payment Date, the Bank will apply the said balance towards the payment of the

instalment then due and payable by the Borrower to the Bank on such date and the payment of any other amounts then due. The surplus, if any, remaining after such applications will be remitted by the Bank to the Manager for payment to the Borrower.

(e) The Borrower hereby directs the Bank to apply, in the manner herein provided, all of the moneys which shall at any time be paid by the Manager to the Bank, for the account of the Borrower, in accordance with the terms of the Security Assurance Agreement.

(f) The Obligations of the Borrower to the Bank under or in respect of this Note and the indebtedness evidenced hereby are absolute, unconditional and irrevocable under any and all circumstances. Without any limitation whatsoever of the generality of the foregoing, the Obligations of the Borrower are in no way conditional upon any requirement that the Bank first (i) attempt to collect from the Manager any moneys which will become due and payable by the Manager to the Borrower in accordance with the terms of the Management Agreement or the Security Assurance Agreement, or (ii) attempt to take possession of, sell, transfer or otherwise dispose of any of the Collateral or otherwise enforce any of the security interest granted to

the Bank hereby. Further, if, on the date on which any Obligation shall be due and payable by the Borrower to the Bank hereunder, the moneys which shall have been paid by the Manager to the Bank for the account of the Borrower in accordance with the terms of the Security Assurance Agreement shall be less than the amount of such Obligation then due, then the Borrower shall be absolutely and unconditionally obligated to pay to the Bank, on the due date of such Obligation, the full amount of such deficiency. Additionally, the failure, refusal or inability of the Manager to make any payment to the Bank for the account of the Borrower in accordance with the terms of the Security Assurance Agreement shall not to any extent or in any manner whatsoever discharge, release, impair or diminish any of the Obligations.

Section 11. Provisions of General Application.

(a) All notices, requests, applications and other communications pursuant hereto shall be in writing, either delivered in hand or sent by first-class mail, postage prepaid, or by telex or telegraph, addressed as follows:

(i) if to the Borrower at One Federal
Street, Boston, MA 02110; or

(ii) if to the Bank, at 60 State Street,

Albany, New York 12207, marked "Attention: Peter W. Arlund, Senior Vice President"; or

(iii) to such other address as either party hereto shall have designated in a written notice to the other party hereto.

(b) All representations, warranties, agreements and covenants of the Borrower in this Note shall be binding upon the Borrower and the successors, assigns, heirs, executors, administrators and other legal representatives of the Borrower. This Note shall inure to the benefit of the Bank and its successors and assigns.

(c) Regardless of the adequacy of any Collateral, any deposits or other sums at any time credited by or due from the Bank to the Borrower may, at any time, without notice to the Borrower or compliance with any other condition precedent now or hereafter imposed by statute, rule of law or otherwise (all of which are hereby expressly waived by the Borrower), be applied to or set off against all or any of the Obligations by the Bank.

(d) This Note and the rights and obligations of the parties hereunder shall be governed by and determined in

(e) This Note shall be executed in two counterparts. One of such counterparts shall be filed with the Interstate Commerce Commission.

IN WITNESS WHEREOF, this Note has been duly executed under the seal by the undersigned on the day and in the year first above written.

[SEAL]

Alford P. Rudwick

The foregoing Promissory Note and Security Agreement and all of the terms, conditions and provisions contained therein are hereby accepted by or on behalf of the undersigned on the 23d day of December, 1980.

KEY BANK N.A.

By

Stephen P. DeLoach

EXHIBIT A

EXHIBIT A TO THE FOREGOING PROMISSORY NOTE
AND SECURITY AGREEMENT DATED December 23, 1980

IDENTIFICATION OF THE CARS

The Cars referred to in the said Promissory Note and Security Agreement are 100-ton steel tank covered-hopper railroad freight cars. The Serial Number of each of the Cars and the Reporting Mark (at the date of completion of this Exhibit A) of each of the Cars are as follows:

SERIAL NUMBERS

REPORTING MARKS

987	GWIX 30001
940	GWIX 30002
943	GWIX 30003
1094	GWIX 30004
1089	GWIX 30005
1096	GWIX 30006
1091	GWIX 30007
960	GWIX 30008
1100	GWIX 30009
1095	GWIX 30010

EXHIBIT B

EXHIBIT B TO THE FOREGOING PROMISSORY NOTE
AND SECURITY AGREEMENT DATED December 23, 1980

Key Bank N.A.
60 State Street
Albany, New York 12207

December 23, 1980

Re: Promissory Note and Security Agreement,
dated December 23, 1980, Executed and
Delivered to Key Bank N.A. by Borrower

LOAN APPLICATION

Dear Sirs:

Pursuant to Section 2(b) of the Promissory Note and Security Agreement, dated December 23, 1980, (the "Note"), the undersigned, as Borrower, hereby makes application to the Bank for the Loan in the principal amount of Three Hundred Twenty Nine Thousand Nine Hundred and (\$329,930) DOLLARS. thirty 22

The undersigned, as Borrower, hereby irrevocably directs the Bank to pay the entire proceeds of the Loan to GWI Rail Management Corporation (as Agent for the Borrower) on December 24, 1980, by causing such proceeds to be credited to Account No. 10258201 of the Agent with the Bank.

The undersigned hereby represents and warrants to the Bank (a) that each of the Cars has been delivered to and accepted by undersigned, and (b) that the Purchase Price will be paid to the Manufacturer on December 24, 1980.

Very truly yours,

Alford P. Rudnick
Borrower

For Borrower Who Is An Individual:

STATE OF *Massachusetts*)
COUNTY OF *Suffolk*) ss.:

On this *23d* day of *December*, 19*80*, before me personally appeared *Alford P. Rudnick*, to me known to be the person described in and who executed the foregoing instrument as Borrower, and he (she) acknowledged that he (she) signed and delivered the foregoing instrument as his (her) free act and deed.

Jack H. Alechman
Notary Public
JACK H. ALECHMAN
My commission expires: *12-21-84*

For Borrower Who Is Not An Individual:

STATE OF)
COUNTY OF) ss.:

On this day of , 19 , before me personally appeared , to me personally know, who being by me duly sworn, says that he (she) is of , (that the seal affixed to the foregoing instrument is the corporate seal of the said)* and that the foregoing instrument was signed (and sealed)* on behalf of said by authority of , and he (she) acknowledged that the execution and delivery of the foregoing instrument was the free act of said .

Notary Public
My commission expires: _____

* Cross out if inapplicable.

For Key Bank N.A.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this 23rd day of December, 1982, before me personally appeared Steven Dechame, to me personally known, who being by me duly sworn, says that he is an Vice-President of Key Bank N.A., and that the form of acceptance on the foregoing instrument was executed on behalf of Key Bank N.A., and he acknowledged that the execution of the form of acceptance on the foregoing instrument was duly authorized by and was the free act and deed of Key Bank N.A.



Notary Public

My commission expires: 3/30/82

NICHOLAS J. GREISLER
Notary Public, State of New York
Qualified in Albany County
Commission Expires March 30, 1982